Supreme Court, U.S.
FILED

(2)

No. 021869 APR 5 2003

In the
Supreme Court of the United States

JOSEPH J. HOUSE,
Petitioner-Appellant,

v.

COPLEY PRESS INC,
FOX VALLEY PUBLICATIONS INC,
JOLIET HERALD NEWS,
Respondents - Appellee,

AND

MIDWEST SUBURBAN PUBLISHING INC,
DAILY SOUTHTOWN,
CARTER NELSON,
Respondents - Appellee.

On Petition For Writ Of Certiorari
To The Court Of Appeal
Of the State of Illinois,
Third Appellate District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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January 7, 2003

Mr. Joseph J. House
210 Muehl
Lockport, IL 60441

In re: Joseph J. House, petitioner, v. Copley Press, Inc., et al., respondents.
No. 94543

Today the following order was entered in the captioned case:

Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for appeal as a matter of right. Motion Denied.

Order entered by the Court.

Very truly yours,
JULEANN HORNYAK
Clerk of the Supreme Court

cc: Mr. Phillip J. Piscopo

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
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December 5, 2002

Mr. Joseph J. House
210 Muehl
Lockport, IL 60441

No. 94543 - Joseph J. House, petitioner, v. Copley Press, Inc., et al., respondents. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for appeal as a matter right in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 27, 2002.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

JOSEPH J. HOUSE, Plaintiff	)	
vs.	)	Case # 01-L 077
MIDWEST SUBURBAN PUBLISHING, INC., THE DAILY SOUTHTOWN, AND CARTER NELSEN. Defendants.	)	

ORDER

This matter comes before the Court on the defendants' 2-619 motion to dismiss. The Court has reviewed the briefs, exhibits and the case law and makes the following findings:

The plaintiff has filed a 4-count complaint alleging that an article published by the defendants on February 9, 2000 contained false and defamatory statements concerning the plaintiff. There is no dispute that the article published was based upon an official press release issued by the Internal Revenue Service. The official release summarized a tax court decision relating to the plaintiff. The tax court judge assessed a civil fraud penalty against the plaintiff for certain tax irregularities involving his personal and business operations.

The defendant bases this 2-619 motion on the Fair Report Privilege and the Incremental Harm Doctrine. The Fair Report Privilege affords the media an unconditional privilege to report the official written or verbal statements of governmental officials and agencies made in their official capacity. This privilege attaches to official press releases issued by the

government official or agency.

The plaintiff alleges that the entire article is false. In addition, the plaintiff selects three separate statements within the article and alleges that they are false, defamatory and libelous per se. In particular, the plaintiff alleges that the statements cited in paragraph 66 of Counts II through IV are false, defamatory and libelous per se.

The Court has reviewed that official press release and finds that the statement referred to i Court II and containec within the newspaper article is a word-for-word replication of the statement within the official press release. The statement referred to in Count III and contained within the newspaper article is a word-for-word replication of the statement co0ntained within the official press of the term "sham" when referring to the accounting company set up by the plaintiff as a tax shelter. Though different words were used to describe the plaintiff's accounting practices, both words are interchangeable in that they are similarly defined and it can be argued that they mean the same thing.

The statement referred to in Court IV and contained within the newspaper article refers to statements contained within the official press release regarding unreported income in the year 1994. The release relates that the tax court judge found that the accounting company did not engage in a substantive business activity. The tax court judge also ruled that the plaintiff failed to report income in excess of $60,000.00 for the accounting company and that both business and personal expenses were paid from the company account without adequate records to distinguish personal from business expenses. Lastly, the release describes the plaintiff's accounting business and fraudulent scheme that was recommended by the plaintiff to others. The release states that 163 such corporations were set

up by the plaintiff for use by other taxpayers. Although the statement as alleged in Court IV is not a verbatim statement from the official press release, it is a substantially correct accounting of the release itself. For the reasons stated, the defendants' motion to dismiss is granted with prejudice.

Filed September 18, 2001
Will County Circuit Clerk
Date: 9/18/01
Signed: Judge Amy Bertani-Tomczak

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

JOSEPH J. HOUSE,	)	
Plaintiff	)	
vs.	)	Case# 01 L 079
	)	
COPLEY PRESS INC., FOX VALLEY AND JOLIET HERALD NEWS,	)	
Defendants.	)	

ORDER

This matter comes before the Court on the defendants' 2-619 motion to dismiss. The Court reviewed the briefs, exhibits and the case law and makes the following findings:

The plaintiff has filed a 3-count complaint alleging that an article published by the defendants on February 12, 2000 contained false and defamatory statements concerning the plaintiff. There is no dispute that the article published was based upon an official press release issues by the Internal Revenue Service. The official release summarized a tax court decision relating to the plaintiff. The tax court judge had assessed a civil fraud penalty against the plaintiff for certain tax irregularities involving his personal and business operations.

The defendants bases this 2-619 motion on the Fair Report Privilege and the Incremental Harm Doctrine. The Fair Report Privilege affords the media and unconditional privilege to report the official written or verbal statements of governmental officials and agencies made in their official capacity. This privilege attaches to official releases issued by the government official or agency.

The plaintiff alleges that the entire article is false. In addition, the plaintiff selects two separate statements within the article and alleges that they are false, defamatory and libelous per se. In particular, the plaintiff alleges that the statements cited in paragraph 61 of Counts II and III are false, defamatory and libelous per se.

The Court has reviewed that official press release and finds that the statement referred to in Count III and contained within the newspaper article is a word-for-word replication of the statement contained within the official press release. As to the statement referred to in Count II, the plaintiff refers to the headline of the article, "Lockport man held liable for fraud penalty". The plaintiff argues that by omitting the term "civil" from the headline that the implication is that the fraud penalty must be criminal in nature. When one reads the entire newspaper article, the article clearly states that the fraud penalty is civil in nature. In addition, the newspaper article is an almost verbatim recitation of the official press release and the newspaper article are almost identical. The press release headline reads: "Former IRS Agent Held Liable for Tax Fraud Penalty".

It appears that the crux of the plaintiff's argument is that the article suggests that the plaintiff was found guilty of a criminal act. But, the usual terms associated with the criminal act are not present in the newspaper article. The article uses the term 'liable' instead of 'guilty'. There is no reference to a sentence of probation or possible imprisonment. And, the newspaper article clearly related that it is a civil fraud penalty and not a criminal fraud penalty.

Because the Fair Report Privilege attaches to official press releases and the newspaper article here is an almost verbatim report of the IRS official press release, the defendant's

motion to dismiss is granted with prejudice.

Filed September 18, 2001
Will County Circuit Clerk

Date: 9/18/01
Signed: Judge Amy Bertani-Tomczak

No. 3–01–0869
(Consolidated with No. 3–01–0887)

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2002

JOSEPH J. HOUSE Plaintiff-Appellant, *v.* COPLEY PRESS, INC., FOX VALLEY PUB, INC., & JOLIET HERALD NEWS, Defendants-Appellees.	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois No. 01--L--079 Honorable Amy Bertani-Tomczak, Judge, Presiding

JOSEPH J. HOUSE Plaintiff-Appellant, *v.* MIDWEST SUBURBAN PUBLISHING, INC., DAILY SOUTHTOWN, & CARTER NELSEN, Defendants-Appellees.	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois No. 01--L--077 Honorable Amy Bertani-Tomczak, Judge, Presiding.

ORDER

The plaintiff, Joseph J. House, filed complaints against

two newspaper companies alleging that he was defamed by two similar articles. In both cases, the defendants moved to dismiss under section 2–619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2–619(a)(9) (West 2000)). The motions to dismiss were granted with prejudice. The two cases were consolidated by this court. On appeal, House argues that the trial court erred in granting the motions to dismiss by improperly applying the fair report privilege. We affirm.

BACKGROUND

House holds a bachelor's degree in accounting. He was an Internal Revenue Service (IRS) revenue agent for five years during the 1970s. His duties with the IRS included auditing Federal income tax returns for individuals and corporations. House also acted as a private accountant and tax preparer for more than 28 years.

In 1998, the IRS notified House that he owed tax deficiencies, additional taxes, and penalties, including a civil fraud penalty, for his personal federal tax return and the federal tax return for Joseph J. House, Inc., (JJH) for the 1994 tax year. House petitioned the United States Tax Court, challenging these IRS rulings.

On January 19, 2000, the tax court issued a

memorandum opinion in which it sustained the IRS. The tax court stated that House "was a knowledgeable former Internal Revenue Service agent, who devised a deceitful plan to divert and disguise his income and used his insight an skill in an attempt to avoid detection."

House had established JJH and two other corporations in which he and other family members commingled personal and business income and expenses. None of the family members maintained personal checking accounts. Checks were written from the three corporations' checking accounts to the other corporations, to House's family members, and to others, for both business and personal purposes.

The tax court found the JJH "lacked economic substance and is a sham." The opinion stated, "We disregard JJH for tax purposes, and we hold the [House] had unreported income in the amount of $66,207."

The tax court upheld the IRS' penalty for tax fraud. The opinion stated that House's "fraudulent scheme was not just a family affair, and he recommended it to others. He set up 163 corporations for other taxpayers." The tax court concluded that House "under reported his income in 1994 with the fraudulent intent of evading taxes."

On February 8, 2000, the IRS issued a news release

which summarized the tax court's opinion. The news release stated that the tax court has sustained a civil fraud penalty against House. It said that House created JJH as a sham corporation. The news release related that "House and his family members did not maintain checking accounts." This document submitted the House comingled personal and business funds in the JJH account. It stated that "House did not report income from JJH in his 1994 tax return."

The news release concluded by stating:

> "The Tax Court found that House had unreported income of $66,207 for tax year 1994. The Court noted that House's fraudulent scheme was not just a family affair, that he recommended it to others, and that he set up 163 corporations for the other taxpayers to use. The Court emphasized that House was knowledgeable about tax laws and IRS audit techniques, and he attempted to use that knowledge to avoid detection. House was also found liable for the fraud penalty."

On February 9, 2000, Midwest Suburban Publishing, Inc. (Midwest), through its employee, Carter Nelsen, published an article in the Daily Southtown newspaper about House's tax case. The article was titled "Man found liable." It stated that

the tax court had found House "liable for using a phony accounting company as a tax shelter." The article related how House created JJH "and used it to write off personal expenses as business deductions." According to the article, House "failed to report more than $66,000 in income" in 1994. The article said that "House recommended the arrangement to acquaintances and set up 163 similar corporations for other taxpayers." In conclusion, the article stated that the judge "found [House] liable for a fraud penalty."

On February 12, 2000, Copley Press, Inc. (Copley), published a similar newspaper article in the Joliet Herald News. The title od this article was "Lockport man held liable for fraud penalty." The article stated that House had "been held liable for a fraud penalty" and that the tax court, sustained a civil fraud penalty against him." The article said that the judge found that House created JJH, "a sham corporation, to conduct his accounting business and attempted to obtain false business deductions for the corporation by deducting his personal expenses." The article related how House and his family members failed to "maintain personal checking accounts and paid both business and personal expenses from JJH's account." According to the article, "[t]he [tax] court found that House had unreported income of $66,207 for tax year 1994." The article

said that "House's fraudulent scheme was not just a family affair, but that he recommended it to others, and that he set up 163 corporations for other taxpayers to use."

House filed complaints against Midwest and Copley, alleging that he was defamed by their articles. Copley and Midwest filed section 2–619 motions to dismiss. These motions were based on the fair report privilege and the incremental harm doctrine. The circuit court issued similar orders in each case on September 18, 2001, granting the motions with prejudice. In the Copley order, the court stated that the fair report privilege applied and that "the newspaper article here is an almost verbatim report of the IRS official press release." In the Midwest order, the circuit court stated that the article, although "not a verbatim statement form the [IRS] press release," was "a substantially correct accounting of the release itself."

House appealed from these two rulings. This court consolidated the cases on appeal.

ANALYSIS

House argues that the trial court erred in granting the motions to dismiss by improperly applying the fair report privilege. He specifically contends that the following two statements are dematory: (1) that he "did not report income from JJH on his 1994 tax return"; and (2) that "the court said

[his] fraudulent scheme was not just a family affair, but that he recommended it to others, and that he set up 163 corporations for other taxpayers to use." House submits that the circuit court erred (1) because the newspaper articles were based on an IRS news release that the defendants knew was an inaccurate summary of tax court's opinion, and (2) because the newspaper articles implied that he was found guilty of criminal fraud rather than liable for civil fraud. The defendants argue that both the fair report privilege and the incremental harm doctrine preclude liability for defamation.

The standard of review for dismissal based on a section 2–619 motion is de novo. Lanphier v. Gilster-Mary Lee Corp., 327 Ill. App. 3d 801, 765 N.E.2d 493 (2002). Section 2–619(a)(9) of the Code of Civil Procedure allows dismissal of an action on the ground that it is barred by other affirmative matter that avoids the legal effect of the claim. 735 ILCS 5/2–619(a)(9) (West 2000); Feldheim v. Sims, 326 Ill. App.3d 302, 760 N.E.2d 123 (2001).

To prove defamation, a plaintiff must show that (1) the defendant made a false statement about the plaintiff, (2) the defendant made an unprivileged publication of the statement to a third party with fault by the defendant, and (3) the publication damaged the plaintiff. Parker v. House O'Lite Corp., 324 Ill.

App. 3d 1014, 756 N.E.2d 286 (2001).

The Illinois Supreme Court has adopted the definition of the fair report privilege provided in the Restatement (Second) of Torts. Catalano v. Pechous, 83 Ill. 2d 146, 419 N.E.2d 350 (1980). Section 611 of the Restatement (Second) of Torts states that "[t]he publication of defamatory matter concerning another in a report of an official action or proceeding *** is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." Restatement (Second) of Torts §611, at 297 (1977). The privilege protects newspaper articles based upon the official written statements of government agencies. Edwards v. Paddock Publications, Inc., 327 Ill. App. 3d 553, 763, N.E.2d 328 (2001).

Under the incremental damage doctrine, also known as the substantial truth doctrine, an allegedly defamatory statement is not actionable if it is substantially true, even if not technically accurate in every detail. False statements that do no incremental damage to a plaintiff's reputation do not injure the interest that is protected by the law of defamation. Gist v. Macon County Sheriff's Dept., 284 Ill. App. 3d 367, 671 N.W.2d 1154 (1996).

The defendant bear the burden of establishing the substantial truth of an article's assertions, which can be demonstrated by showing that the "gist" or "sting" of the

defamatory material is true. To determine the "gist" or "sting" of allegedly defamatory material, a trial court must look to the highlight and pertinent angle of the article, and not to the inoffensive details that are immaterial to the truth of the statement. House O'Lite, 324 Ill. App. 3d 1014, 756 N.E.2d 286. An Appellate court may affirm the trail court's decision for any reason supported by the record. Brugger v. Joseph Academy, Inc., 326 Ill. App. 3d 328, 760 N.E.2d 135 (2001).

In this case, the trail court's order granting Copley's section 2–619 motion explicitly applied the fair report privilege. In both the Copley and Midwest orders, even though the court did not explicitly use the terms "incremental damage" or "substantial truth" the court's orders found that the articles were substantially true.

House's defamation allegations concerning the statement that he "did not report income from JJH on his 1994 tax return" is groudless. This statement is a verbatim quotation form the IRS press release, an official report of a government agency. Thus, it is protected by the fair report privilege. The statement is also substantially true to the tax court's statement that the court would "disregard JJH for tax purposes, and [] hold that [House] had unreported income in the amount of $66,207."

The statement, "[t]he court said House's fraudulent

scheme was not just a family affair, but he recommended it to others, and that he set up 163 corporations for other taxpayers to use" is identical to a sentence in the IRS press release except for two words. The Copley article substituted the word "noted" for the word "said" and inserted the word "but". Certainly, these differences are de minimis, making the two statements virtually identical in meaning. This statement, therefore is protected by the fair report privilege. Furthermore, the statement is substantially true to the tax court's statement that House's "fraudulent scheme was not just a family affair, and her recommended it to other. He set up 163 corporations for other taxpayer."

House has not demonstrated that the defendants knew the IRS press release to be inaccurate. Regardless of the accuracy of the press release, the newspaper articles are protected by the fair report doctrine because the articles relied upon the press release, which was an official report of a government agency.

Furthermore, if the newspapers had relied upon the tax court's opinion rather than the IRS press release as House suggests, he would have suffered incrementally greater damage to his reputation. The tax court's memorandum opinion went into far greater detail than the IRS press release concerning

House's fraudulent scheme, and the court roundly castigated House for his attempt to deceive the IRS.

House's contention that the articles implied he was convicted of criminal fraud rather than civil fraud is meritless. Both articles used the word "liable" in their titles, signaling discussion of a civil rather than a criminal matter. The bodies of the articles employed several terms of art indicating that House's penalty was for civil fraud. Conversely, the articles were void of terms associated with criminal fraud.

House's defamation claims were barred by the affirmative matter that the newspaper articles were protected both by the fair report privilege and the incremental damage doctrine. As a matter of law, we hold that the trial court did not err by granting the defendants' section 2-619 motions to dismiss.

CONCLUSION

For the foregoing, we affirm the judgement of the Will County circuit court.

Affirmed.

BRESLIN, J., with HOLDRIGE and SLATER, JJ., concurring.

Be it remebered, that afterwards on AUGUST 5, 2002 the Order of the Court was filed in the Clerk's office of said Court.

Amendment 5

GUARANTY OF TRIAL BY JURY; PRIVATE PROPERTY TO BE RESPECTED.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall amy person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6

RIGHTS OF ACCUSED PERSONS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment 8

EXCESSIVE BAIL, FINES, AND PUNISHMENT PROHIBITED

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.